

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Expedited Application of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with Domestic or Euro-Market offerings, to Guarantee the Obligations of Others in Respect of the Issuance of Securities and to Arrange For Standby Letters of Credit as Performance Guarantees, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed \$2 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) Issue Variable Rate Debt (Including Fixed Rate Debt Swapped to a Variable Rate) to Finance Balancing Account Undercollections; and (4) Obtain an Exemption from the Competitive Bidding Rule.

Application 00-10-029
(Filed October 18, 2000)

**OPINION REGARDING THE PETITION TO MODIFY
DECISION (D.) 01-01-062, D.01-02-050, D.01-06-074, AND D.02-03-025
FILED BY PACIFIC GAS AND ELECTRIC COMPANY**

Summary

This decision extends Pacific Gas and Electric Company's (PG&E's) authority to pledge its gas customer accounts receivable ("accounts receivable") and core gas inventory ("core inventory") for the purpose of procuring core gas supplies until the earlier of (i) May 1, 2004, (ii) 15 days after an upgrade of the

credit rating of PG&E's senior unsecured long-term debt to at least BBB- by Standard & Poor's (S&P) or Baa3 by Moody's Investor Services, Inc. (Moody's), (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

Background

In the first of four previous decisions, D.01-01-062, the Commission granted PG&E authority under Pub. Util. Code § 851¹ to pledge its accounts receivable and core inventory² for the sole purpose of procuring core gas supplies. The authority granted by D.01-01-062 terminated the earlier of (i) 90 days after the effective date of the decision, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's. In a second order, D.01-02-050, the Commission extended PG&E's authority to pledge its accounts receivable and core inventory until July 31, 2001. In a third, D.01-06-074, the Commission extended PG&E's authority until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. The most recent action was D.02-03-025 that extended the authority until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² For purposes of this decision, "core inventory" is defined as gas designated for core customers that is held in storage fields and pipelines.

of PG&E's Chapter 11 case. The Commission issued these decisions in response to the precipitous decline in PG&E's financial condition, which culminated in PG&E filing for bankruptcy.

On January 9, 2003, PG&E jointly filed a *Petition For Modification of Decisions No. 01-01-062, 01-02-050, 01-06-074 And 02-03-025* (Petition, or Petition to Modify) and a *Motion of Pacific Gas And Electric Company For Expedited Decision and Order Shortening Time* (Motion). PG&E acknowledges that the Commission has established regulatory mechanisms that enable PG&E to pay for gas purchases on a timely basis. PG&E also states that its status as a debtor in possession under federal bankruptcy law should not impede its ability to pay for future gas supplies. PG&E represents that suppliers are more willing to deal with PG&E because of this program and that the suppliers themselves have deteriorating credit ratings too. This is discussed in a sworn declaration from the Portfolio Manager of PG&E's Gas Procurement Department (Manager).³ He cites that there are twelve fewer counter-parties available for transactions; that seven suppliers are the source of 75% of core gas requirements; and that 33% of all core gas purchased by PG&E was subject to the gas accounts receivable securitization. Consequently, the Manager believes that PG&E's ability to obtain adequate supplies of core gas would be threatened if the Commission fails to extend PG&E's authority to pledge its gas accounts receivable.

Several gas suppliers support PG&E's Petition.⁴

³ Declaration of Raymond X. Welch, dated January 9, 2003.

⁴ There is an undated letter of David J. Yi, Chief Credit Officer of Cook Inlet Energy Supply L.L.C. (Cook Inlet), which indicates it relies on PG&E's security agreement for sales to PG&E. We direct the Docket Office to place this letter in the correspondence file for this application.

- Dynegy Marketing and Trade (Dynegy), Duke Energy North America and Duke Energy Trading and Marketing (Duke Energy) jointly served a response.⁵ They maintain that extending PG&E's authority to pledge its assets is crucial to PG&E's continued success in securing adequate supplies of gas for its customers during a period of financial distress, and will facilitate longer-term contracts at lower prices. They state that "certainty" is highly valued by gas suppliers.
- Mirant Americas Development, Inc. (Mirant), responded by a letter dated January 27, 2003, stating that as one of PG&E's gas suppliers it relies on a Gas Supplier Security Agreement and it requests that the Commission extend the authority for another year.
- BP Energy Company (BP Energy) served comments on January 29, 2003, one day later than specified in the January 22, 2003 ALJ Ruling.⁶ It supports PG&E's Petition and urges the Commission to extend the authority for three to five years. Many of the other points raised by BP Energy are beyond the limited scope of the Petition and will not be addressed here.

Discussion

We have no reason to doubt PG&E's assertions that gas suppliers will not sell gas to PG&E without assurance that they will be paid. Accordingly, we are persuaded by PG&E that it needs an extension of time beyond May 1, 2003, to pledge its gas accounts receivable and core inventory for the purpose of procuring core gas supplies. Given the nature of PG&E's finances, we believe

⁵ *Joint Response of Dynegy Marketing and Trade, Duke Energy North America and Duke Energy Trading and Marketing to Pacific Gas and Electric Company's Petition to Modification: D.02-03-025*, dated January 21, 2003.

⁶ We will accept BP Energy's comments as timely filed. In the future, BP Energy must file a motion to accept late-filed comments.

that it is in the public interest to periodically reconsider PG&E's need for authority to pledge its gas accounts receivable and core inventory.

Duke Energy filed a Petition to Intervene on January 21, 2003, pursuant to Rule 54,⁷ also citing Rule 53.⁸ Duke Energy stated its intention to support PG&E's Petition. We find that this Petition to Intervene is for relief within the scope of Rule 54 and it is granted.

For the preceding reasons, we will modify D.02-03-025 to extend PG&E's authority to pledge its gas accounts receivable and core inventory for the sole purpose of procuring core gas supplies until the earlier of (i) May 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case. In all other respects, D.02-03-025, D.01-06-074, D.01-02-050, and D.01-01-062 remain in full force and effect.

Procedural Matters

Notice of PG&E's Petition appeared in the Commission's Daily Calendar on January 28, 2003.⁹ Pursuant to a ruling issued by Assistant Chief Administrative Law Judge (ALJ) Minkin on January 22, 2003, responses to PG&E's Petition were due on January 28, 2003. On January 22, 2003, the

⁷ *Petition of Duke Energy North America and Duke Energy Trading and Marketing to Intervene, A.00-10-029*, dated January 21, 2003.

⁸ By Rule 53, Duke Energy may not expand the scope of this proceeding.

⁹ PG&E attached its Petition to Modify, behind its concurrently filed Motion For Expedited Decision and Order Shortening Time, instead of separately filing both pleadings. This led to the delay in placing the Petition to Modify on the Commission's daily calendar.

proceeding was reassigned to ALJ Long. PG&E was allowed to reply on January 29, 2003. Also pursuant to that ruling, Pub. Util. Code § 311(g) and Rule 77.7(f) of the Commission's Rules of Practice and Procedure (Rules), the time for comments on a draft decision to the Petition was shortened to five days and PG&E was allowed two days for a reply.

After receipt of the responses in support of PG&E's Petition, we have determined that Pursuant to Rule 77.7(f)(2), the otherwise applicable 30-day period for public review and comment may be waived.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. D.02-03-025 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.
2. PG&E represents that it needs an extension of its authority to pledge its accounts receivable and core inventory in order to maintain its ability to procure adequate supplies of gas to meet the needs of its core customers.
3. PG&E represents that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's gas accounts receivable and core inventory.
4. The following gas suppliers represent that PG&E's ability to pledge its gas accounts receivable is essential to PG&E's continued ability to procure adequate

supplies of gas for its core customers: Dynegy, Duke Energy, Mirant, and BP Energy.

Conclusions of Law

1. It is in the public interest to extend beyond May 1, 2003, PG&E's authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring gas supplies to meet the needs of its core customers.

2. Given the nature of PG&E's finances, it is in the public interest to periodically reconsider PG&E's need for authority to pledge its accounts receivable and core inventory.

3. PG&E's authority to pledge its accounts receivable and core inventory should be extended to the earlier of (i) May 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

4. The following order should be effective immediately to help ensure PG&E's uninterrupted ability to procure sufficient supplies of gas to meet the needs of its core customers.

O R D E R**IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to pledge its gas customer accounts receivable and core gas inventory, subject to PG&E's Mortgage, for the sole purpose of procuring gas for PG&E's core customers, including flowing gas supplies and storage gas.

2. The authority granted to PG&E in Ordering Paragraph 1 shall terminate the earlier of (i) May 1, 2004, (ii) 15 days after an upgrade of the credit rating of

PG&E's senior unsecured long-term debt to BBB- by Standard & Poor's or Baa3 by Moody's Investor Services, Inc., (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

3. PG&E's petition to modify Decision (D.) 01-01-062, D.01-02-050, D.01-06-074, and D.02-03-025 filed on January 9, 2003, is granted and denied to the extent set forth in the previous Ordering Paragraphs. In all other respects, these decisions remain in full force and effect.

4. The *Petition of Duke Energy North America and Duke Energy Trading and Marketing to Intervene*, A.00-10-029, is granted.

5. Application 00-10-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.